IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

CRL.A.No. 329 of 2007(D)

CC.144/1997 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II,NEYYATTINKARA

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APPELLANT:

STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM (CRIME NO.124/96 OF POZHIYOOR
POLICE STATION)

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

RESPONDENTS:

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1. STANELY JOHNS, S/O. DEVARAM
S.L. NIVAS, THALAPULAYANVILA,
NALLOORVATTOM DESOM,
KULATHOOR VILLAGE.

BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL
SRI.P.C.PRATHAP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.329 OF 2007-A

Dated this the 9th day of March, 2007.

JUDGMENT

The State filed this appeal against the judgment of the trial court passed in C.C.No.144/1997 on the file of the Judicial Magistrate of First Class-II, Neyyattinkara. By the impugned judgment, the trial court found that the respondents have committed the offences as charged against them. The prosecution case against the respondents is that on 1.5.1996 at about 10 a.m they trespassed into the courtyard of the house of PW1 (CW1) at Thalapulayanvila within the limits of Pozhiyoor Police Station and the 1st accused inflicted two cut injuries on the hand of PW1 with a chopper and the 2nd accused caused another injury on the finger of PW1. The respondents committed the above offence due to the previous enmity pertaining to property dispute. To prove the charge against the respondents, prosecution examined Pws 1 to 8 and relied on Exts.P1 to P11. After closing the prosecution evidence, the respondents were questioned under Section 313 of the Code of Criminal Procedure. Denying all the

prosecution case against the respondents, they have stated that the case was foisted against them and the same is due to some dispute regarding the property. PW1 and the respondents are brothers. To prove the case, the respondents have examined Dws 1 to 4 and also relied on Exts. D1 to D5. However, after considering the entire evidence adduced by the prosecution, the court below found that the prosecution could not prove any case against the respondents. Hence, the trial court found that the respondents were not guilty and they were acquitted. Against that acquittal, this appeal is filed.

2. The case was originally investigated by the police on a reference made by the magistrate under Section 156(3) of the Code of Criminal Procedure and after completion of the investigation, the police laid the charge against the respondents for the offences punishable under Sections 324, 326 and 447 read with Section 34 of the I.P.C. To prove the case against the respondents, prosecution mainly relied on the evidence of Pws 1 to 3 and the doctor- PW8. Pws 1 and 2 were examined to prove as eye witnesses to the incident,

but the evidence of these witnesses was discarded by the trial court on the ground that even though PW1 reached the hospital more than two and a half hours after the alleged incident and after reaching the hospital, they waited for more than one hour. That suggests the injuries sustained by PW1 are not very serious. That apart, the doctor, who examined PW1, has not also given any evidence regarding the nature of the injuries. Ext.P6 wound certificate of PW1 has produced only during trial and not by the police. Hence, with regard to the injury sustained by PW1, there is no acceptable evidence and that apart, PW2 is the wife of PW1, her evidence is also not corroborating with the evidence of PW1 and there are contradictions. The trial court also found that the mother of both PW1 and the respondents was examined as DW1, who had stated before the court that she does not know what happened actually in the house and she also admitted that there was dispute about the property between herself and altercation happened in the house is also narrated by DW1 that there was only a commotion between the brothers regarding division of property. On this evidence, the trial court found that the prosecution has not

proved the case against the respondents beyond reasonable doubt. After considering the entire evidence once again and the reasons stated by the trial court, this Court is of the view that the dispute is on the basis of division of the property between brothers and the mother. DW1 had given a true picture of the incident that what had happened in the house. Hence, the findings of the trial court requires no interference by this court as they are on evidence.

In the above circumstances, the appeal is dismissed confirming the judgment of the trial court.

K. THANKAPPAN, JUDGE.

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